IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.1394 OF 2007

...

Smt.Nargis Jal Haradhvala ...Petitioner

v/s.

State of Maharashtra & ors. ...Respondents

...

Mr.K.Shivramkrishanan for the Petitioner.

Mr.Milind More, AGP for the Respondents.

...

**CORAM: D.K.DESHMUKH** &

J.H.BHATIA, JJ.

**DATED:** 16TH AUGUST, 2007

**P.C.:**

1. By this petition the Petitioner challenges the order dated 18th October, 2005 at Exh.U to the

petition and the order dated 25th July, 2006 at Exh.Y to the petition. By the order at Exh.U, the competent authority under the Urban Land Ceiling Act has informed the Petitioner that the Petitioner has not complied with the terms of the exemption order and therefore, she is liable to be prosecuted, and therefore, FIR is being registered with the competent police station.

2. There is no dispute that a scheme was submitted by the Petitioner claiming exemption from the provisions of the Urban Ceiling Act under section 21. One of the terms of the exemption was that the Petitioner was to surrender 30% of the flats to the State Government. It is also an admitted position that the Petitioner has not complied with this condition.

3. It was submitted firstly that in view of the judgment of the Supreme Court in the case of Shantistar Builders Vs. N.K.Gotame & ors, (1990) 1 SCC 520, the Petitioner is liable to surrender only 5% of the flats and that she has submitted more than 5% of the flats.

4. So far as this submission is concerned, it cannot be accepted because the Division Bench of this Hon'ble Court by its judgment in Writ Petition No.2629 of 1992 decided on 3rd December, 1992 has held that the directions issued by the Supreme Court in its judgment in the case of M/s. Shantistar Builders referred to above do not have retrospective effect and they do not operate in relation to the schemes which were sanctioned before that judgment was delivered by the Supreme Court. Then it was submitted that the order at Exh.Y is an order made by the authority which is not competent to make the order. Perusal of that order shows that that is not in the nature of an order made, it is only an intimation given by the competent authority to the Petitioner that as she has not complied with the conditions imposed by the exemption order, FIR will be lodged with the competent police station, and therefore, we find no fault with the order of the Appellate authority rejecting the appeal.

5. Reliance was placed on letter dated 30-4-1993 which is supposed to have signed by the Addl. Collector & C.A. under the Urban Ceiling Act to contend that even according to State Government only

10% of the flats are to be handed over to the State Government by the Petitioner. Apart from the fact, authenticity of this letter is disputed by the State Government, it is the submission of the Petitioner herself before us that the power to grant exemption is only with the State Government and the competent authority has no power and if that is so, the order dated 30th April, 1993 which has the effect of modifying the terms and conditions of the exemption order also cannot be within the power of the competent authority.

6. Therefore, looking at the matter from any point of view, there is no substance. We are also informed that the offence with the competent police station is already registered. Petition is, therefore, rejected.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)